NO. 79-6846

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

RECEIVED
NOV . 7 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN CREACH,

Petitioner,

vs.

ORIGINAL COPY

THE PEOPLE OF THE STATE
OF ILLINOIS,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,

THOMAS E. HOLUM,
Assistant Attorneys General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Attorneys for Respondents.

NEAL B. GOODFRIEND,
Assistant Attorney General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Of Counsel.

TABLE OF CONTENTS

	PAGE
AUTHORITIES CITED	ii
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI	6
I. THE ILLINOIS SUPREME COURT PROPERLY DETERMINED THE MERITS OF THE STATE'S APPEAL BY REVIEWING THE ENTIRE TRIAL COURT RECORD	6
II. THE PETITIONER'S CLOSE RELATIONSHIP WITH THE MURDER VICTIM, HIS ADMITTED CONTACT WITH THE VICTIM AT THE APPROXIMATE TIME OF THE VICTIM'S DEATH, AND HIS UNEXPLAINED FLIGHT FROM THE JURISDICTION IN THE VICTIM'S AUTO, GAVE POLICE PROBABLE CAUSE TO ARREST THE PETITIONER	8
CONCLUSION	12

AUTHORTIES CITED

	PAGE
Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223 (1964).....	8
Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302 (1949).....	8
Draper v. United States, 358 U.S. 307, 79 S.Ct. 329 (1959).....	8
People v, Braden, 34 Ill.2d 516, 216 N.E.2d 808 (1966).....	10
People v. Clay, 55 Ill.2d 501, 304 N.E.2d 280 (1973).....	11
People v. Creach, 69 Ill. App.3d 874, 387 N.E.2d 762 (1st Dist. 1979).....	6
People v. Creach, 79 Ill.2d 96, 402 N.E.2d 228 (1980).....	11
People v. Glanton, 33 Ill. App.3d 124, 338 N.E.2d 30 (1st Dist. 1975).....	10
People v. Helm, 69 Ill. App.3d 78, 387 N.E.2d 24 (3rd Dist. 1979).....	7
Peters v. New York, 392 U.S. 40, 88 S.Ct. 1889 (1968).....	9, 10
Smith v. United States, 123 U.S. App. D.C. 202, 358 F.2d 833 (1966), cert. denied, 386 U.S. 1008 (1967).....	8, 11
Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584 (1969).....	11
United States v. Agostino, 608 F.2d 1035 (5th Cir. 1979).....	8, 11
United States v. Cooperstein, 221 F. Supp. 522 (D. Mass. 1963).....	11
United States v. Ganter, 436 F.2d 364 (7th Cir. 1970)..	11
United States v. Pope, 561 F.2d 663 (6th Cir. 1977)....	10
United States v. Stratton, 453 F.2d 36 (8th Cir.), cert. denied, 405 U.S. 1069 (1972).....	8, 11

STATUTES

Supreme Court Rule 615(b), Ill. Rev. Stat. 1979, ch. 110A, § 615(b).....	7

NO. 79-6846

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

JOHN CREACH,

Petitioner,

vs.

THE PEOPLE OF THE STATE
OF ILLINOIS,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Illinois Supreme Court is reported at 79 Ill.2d 96, 402 N.E.2d 228 (1980), and was submitted to this Court as "Appendix B" to the Petition for Writ of Certiorari. The opinion of the Illinois Appellate Court, First District, is reported at 69 Ill. App.3d 874, 387 N.E.2d 762 (1979), and was submitted to this Court as "Appendix A" to the Petition for Writ of Certiorari.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. However, as treated more fully in the argument contained herein, respondents do not believe that the petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant his Petition for Writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Illinois Supreme Court properly determined the merits of the State's appeal by reviewing the entire trial court record.

II. Whether the petitioner's close relationship with the murder victim, his admitted contact with the victim at the approximate time of the victim's death, and his unexplained flight from the jurisdiction in the victim's auto, gave police probable cause to arrest the petitioner.

STATEMENT OF THE CASE

The body of Delores Irion was found at approximately 7 a.m. on September 25, 1973, lying near the CTA tracks in Evanston.[1] She had died there as a result of receiving multiple stab and gunshot wounds. Petitioner John Creach and his co-defendant, Thomas Ruppert, were arrested on the morning of September 26, 1973 by Evanston police officers Glanz and Birkenheier. The petitioner was given his Miranda rights by Officer Glanz at the Evanston police station. During an interview with Officer Glanz, the petitioner made a number of statements which implicated the petitioner in the offenses committed against Delores Irion. After the interview, the petitioner was charged with murder and armed robbery.

Prior to trial the petitioner and defendant Ruppert moved to suppress their arrests on the grounds that the police lacked probable cause. At the hearing on the motion to suppress, officers Glanz and Birkenheier testified as to facts and circumstances known to them before they took the petitioner and defendant Ruppert into custody.

> . . . According to the officers, Detective Mitchem of the Evanston Police Department told them that he had spoken to Creach's mother, Dolly Moore, during the day on which Dolores Irion's body was discovered. Mrs. Moore, who lived next door to the victim in Chicago, told Detective Mitchem that she had had a telephone conversation earlier that day with her son, who was in Ohio.
>
> The officers also testified that shortly after 8 a.m. on the following day, September 26, 1973, they went to the home of Mrs. Moore. She repeated the telephone conversation she had with her son the previous day. In addition, she stated to the officers that she informed her son, during the same telephone conversation, that Dolores [sic] Irion had been murdered; that Creach responded that he was in Ohio with a friend, Tom; and that he had last seen Dolores [sic] Irion at 1:30 a.m. on September 25, 1973, when he left for Ohio in her 1966 Cadillac. During this telephone conversation Mrs. Moore asked her son to come home immediately; Creach responded that

---

[1] The facts contained in the "Statement of the Case" have been primarily reconstructed from the summaries contained in People v. Creach, 79 Ill.2d 96, 402 N.E.2d 228 (1980), and People v. Creach, 69 Ill. App.3d 874, 387 N.E.2d 762 (1st Dist. 1979).

> he would. Mrs. Moore described Tom to the officers as a short youth with fair hair. Mrs. Moore also informed the officers that Creach had been living with Irion periodically during the last four weeks, had been driving Irion's car and had been taking her to and from work.
>
> The officers also related that the Evanston police had independently confirmed that the victim's car was missing, that it had rained heavily until about midnight on the evening of September 24, 1973, but that, when the victim's body was discovered, the clothing was dry, indicating that the victim had not been killed until after midnight. The police knew of no one other that Creach who had seen the victim alive after that time.

People v. Creach, 79 Ill.2d 96, 98-99, 402 N.E.2d 228, 229 (1980).

While at the home of Mrs. Moore, Officer Glanz was shown a photograph of the petitioner. The two officers returned to their squad car and maintained a surveillance over Mrs. Moore's home. At approximately 9:30 a.m., they observed the petitioner and defendant Ruppert in front of Mrs. Moore's home. The two suspects were on foot and the victim's automobile, which was known to be in their possession after the body was found, was not in the area. The two officers took the petitioner and defendant Ruppert into custody and transported the suspects to the Evanston police station.

The trial court concluded that the police officers had probable cause to arrest the petitioner and defendant Ruppert. Petitioner subsequently filed a motion asking the court to reconsider its earlier finding that the Evanston police officers did have jurisdiction to arrest him in Chicago. In issuing a ruling on the motion to reconsider, the trial court made several statements as to whether there was probable cause to arrest. Despite the statements, the trial court denied the motion to reconsider. This ruling left intact its earlier holding which denied the petitioner's motions to suppress and found that probable cause and jurisdiction to arrest did exist.

Statements obtained from the petitioner after his arrest were admitted as substantive evidence at trial. Before the admission of these statements, a number of the state witnesses testified as to additional information concerning the facts

and circumstances known to the Evanston police prior to the arrest of petitioner. At the time of the arrest, the Evanston Police Department had ascertained that the victim had been shot with a .25 caliber automatic pistol, that a box for a .25 caliber pistol was found in the victims apartment, and that the apartment had been locked with a key when the police reached it. Furthermore, when the body was discovered it was covered with dried blood indicating that Delores Irion was shot and stabbed long before 7:00 a.m. (R. 851)

A jury found petitioner guilty of murder and armed robbery. The trial court sentenced petitioner to 35 to 70 years on each charge, the sentences to run concurrently.

ARGUMENT IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI

I.

THE ILLINOIS SUPREME COURT PROPERLY DETERMINED THE MERITS OF THE STATE'S APPEAL BY REVIEWING THE ENTIRE TRIAL COURT RECORD.

Petitioner's argument that the Illinois Supreme Court weighed evidence de novo on the question of probable cause to arrest the petitioner is based solely on his erroneous interpretation of the trial court record. At the initial hearing on the motion to suppress, the trial court concluded that the Evanston police officers had probable cause to arrest the petitioner. Petitioner subsequently filed a motion asking the court to reconsider its earlier finding that the Evanston police had jurisdiction to arrest him in Chicago. As pointed out by Justice Linn's dissent in the Illinois Appellate Court:

> . . . A reading of the motion to reconsider, the memorandum of law submitted in support thereof, and the corresponding arguments of counsel demonstrates that neither defendant requested a reconsideration of the trial court's earlier finding that probable cause to arrest did exist. Rather, in light of what were then recent cases, each defendant asked the trial court to reconsider its earlier finding that the Evanston police officers did have jurisdiction to arrest them in Chicago. Despite the statements of the trial court quoted by the majority, in my view, the trial court's denial of the motion to reconsider left intact its earlier holding which denied the defendants' motions to suppress and found that probable cause and jurisdiction to arrest did exist.

People v. Creach, 69 Ill. App.3d 874, 898-899, n. 2, 387 N.E.2d 762, 780, n. 2 (1st Dist. 1979)(dissenting opinion)(emphasis in original)

This interpretation of the trial court's ruling is further supported by the report of proceedings. During trial, all of the fruits emanating from the arrest of petitioner were admitted as substantive evidence. (See trial court record, testimony of officers Birkenheier, Hennegan, Glanz and Schweda)

Thus, the Illinois Supreme Court did not disregard the specific findings of the trial court on the probable cause issue.

Instead, the Illinois Supreme Court properly determined the merits of the State's appeal based upon a review of the entire record before it. See People v. Helm, 69 Ill. App.3d 78, 387 N.E.2d 24 (3rd Dist. 1979); Supreme Court Rule 615(b), Ill. Rev. Stat. 1979, ch. 110A, § 615(b).

II.

THE PETITIONER'S CLOSE RELATIONSHIP WITH THE MURDER VICTIM, HIS ADMITTED CONTACT WITH THE VICTIM AT THE APPROXIMATE TIME OF THE VICTIM'S DEATH, AND HIS UNEXPLAINED FLIGHT FROM THE JURISDICTION IN THE VICTIM'S AUTO, GAVE POLICE PROBABLE CAUSE TO ARREST THE PETITIONER.

Petitioner contends that the Illinois Supreme Court erroneously concluded that the Evanston police had probable cause to arrest the petitioner. Respondent asserts that the evidence adduced in the state court proceedings clearly supported a finding of probable cause for petitioner's arrest.

Probable cause to arrest exists where the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a reasonable and prudent police officer to believe that the arrested person has committed or is committing an offense. Draper v. United States, 358 U.S. 307, 313, 79 S.Ct. 329, 333 (1959). Although more than mere "reasonable suspicion" is required, the information must merely constitute reasonable grounds for belief of guilt. Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310 (1949). In determining probable cause,

> we deal with probablities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

Brinegar, id.

In reviewing probable cause decisions made by law enforcement officers in the field, the Court will look to the totality of the circumstances revealed by the record. See Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 225 (1964). Probable cause will be evaluated upon the collective knowledge of the police rather than that of only the officer who actually makes the arrest where there has been at least minimal communication between different officers. United States v. Agostino, 608 F.2d 1035, 1037 (5th Cir. 1979); United States Stratton, 453 F.2d 36, 37 (8th Cir.), cert. denied 405 U.S. 1069 (1972); Smith v. United States, 123 U.S. App. D.C. 202,

cert. denied 386 U.S. 1008 (1967).

This Court's decision in Peters v. New York, 392 U.S. 40, 88 S.Ct. 1889 (1968), provides insight into the factors necessary to establish probable cause. In Peters, a New York City police officer was at home in his apartment when he heard a noise at the door. He looked through the peephole into the hall and saw "'two men tiptoeing out of the alcove toward the stairway.'" The officer had lived in the 120-unit building for 12 years and did not recognize either of the men as tenants. Believing that he was witnessing an attempted burglary, the officer put on some civilian clothes and armed himself with his service revolver. The officer opened his door, entered the hallway and slammed the door loudly behind him. The two men fled down the stairs and were chased by the officer. The officer was successful in apprehending defendant Peters. The defendant claimed that he was visiting a girlfriend but declined to reveal the girlfriend's name. While patting down the defendant for weapons, the officer found an envelope containing burglar's tools.

The Court upheld the search of the defendant as properly incident to a lawful arrest. The strange noises at the officer's apartment door, the officer's inability to recognize the two men in the hallway as fellow tenants and their furtive movements before and after the officer's confrontation with the two men, gave the officer probable cause to believe that the defendant was engaged in criminal activity.

> [D]eliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of mens rea, and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, are proper factors to be considered in the decision to make an arrest.

88 S.Ct. at 1904, 392 U.S. at 66-67 (citations omitted).

In the instant case, the testimony elicited from Evanston police officers Glanz and Birkenheier at the suppression hearing is as compelling as that in Peters for finding probable cause to arrest. The Evanston Police Department was investigating a particularly brutal murder where the victim was stabbed and

and shot repeatedly. The petitioner had communicated through his mother that he had had seen the murder victim at 1:30 a.m. on September 25, 1973. Her body had been found on the same morning at approximately 7:00 a.m. Thus, the petitioner was probably the last person to see the victim alive. Of even greater significance was the fact that the petitioner had unexpectedly traveled to Ohio in the victim's automobile. Although there is no evidence of the petitioner attempting to escape the immediate grasp of law enforcement officials, Peters, supra, the petitioner's sudden departure can appropriately be characterized as flight which colors conduct that hitherto has appeared innocent, see United States v. Pope, 561 F.2d 663, 668 (6th Cir. 1977). Petitioner's flight from the jurisdiction, coupled with the officers' specific knowledge relating to petitioner to the victim and the time that the crime occurred, provided sufficient factors to establish probable cause to arrest the petitioner. See Peters, supra, 392 U.S. at 66-67, 88 S.Ct. at 1904.

Even if the trial court improperly denied the motion to suppress, the error was cured by the presentation of additional evidence at trial which supported a finding of probable cause to arrest. People v. Braden, 34 Ill.2d 516, 216 N.E.2d 808 (1966); People v. Glanton, 33 Ill. App.3d 124, 338 N.E.2d 30 (1st Dist. 1975). Before the admission of any evidence or statements that resulted from the arrest of the petitioner, testimony concerning the condition of the victim's body and the weapon used in the commission of the offense was elicited from state witnesses. The body, when discovered at 7:00 a.m., was covered with dried blood. This indicated that the crime occurred long before that time. The petitioner stated to his mother that he had been with the victim at approximately 1:30 a.m. He thus placed himself with the victim at a time that coincided with the time of her death.

Before petitioner's arrest, Evanston police officers had ascertained that the victim had been shot with a .25

caliber automatic pistol. A box for a .25 caliber pistol was found in the victim's apartment. The apartment had been locked with a key when the police reached it. The petitioner, having access to the apartment, could have easily removed the weapon in perpetrating the offense.

The record demonstrated that the various police officers working on the case had at least minimal communication with each other regarding the criminal liability of petitioner in the murder. See Creach, supra, 79 Ill.2d at 98, 402 N.E.2d at 229 (communication between Detective Mitchem and officers Glanz and Birkenheier). Probable cause to arrest the petitioner will be evaluated upon their collective knowledge. Agostino, supra; Stratton, supra; Smith, supra.

> The officers knew that Creach had been living with the victim, that she most likely had been killed sometime after midnight on September 25, 1973, that Creach had last seen her at 1:30 a.m. on that date, just 5 1/2 hours prior to the time the body was discovered, and that he had unexplainedly left for Ohio in the victim's car.

Creach, supra, 79 Ill.2d at 102, 402 N.E.2d at 231. Trustworthy evidence made it clear that an offense had been committed and that the petitioner had been on the scene at or near the time of its commission. See United States v. Cooperstein, 221 F. Supp. 522, 526 (D. Mass. 1963). The trial court's finding of probable cause to arrest is not clearly erroneous and should not be disturbed on appeal. See Spinelli v. United States, 393 U.S. 410, 419, 89 S.Ct. 584, 591 (1969); United States v. Ganter, 436 F.2d 364, 368 (7th Cir. 1970); People v. Clay, 55 Ill.2d 501, 505, 304 N.E.2d 280, 282 (1973).

CONCLUSION

For the foregoing reasons, respondents pray that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL, JR.,

THOMAS E. HOLUM,
Assistant Attorneys General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Attorneys for Respondents.

NEAL B. GOODFRIEND,
Assistant Attorney General,
188 W. Randolph St. (Suite 2200),
Chicago, Illinois 60601,
(312) 793-2570,

Of Counsel.